

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

SECOND APPEAL NO. 523 OF 2014
WITH
CIVIL APPLICATION NO. 8938 OF 2014

Dhondiram Kondiba Bhujange and others .. Appellants

versus

Sukhdeo Jairam Suradkar .. Respondent

Mr. Shyam C. Arora, Advocate for appellants

Mr. P. M. Gaikwad, Advocate for respondent

CORAM : SUNIL P. DESHMUKH, J.
24TH NOVEMBER, 2015

ORDER:

1. Heard learned counsel for the parties.
2. This is second appeal by defendants unsuccessful in the trial court as well as appellate court, contending that plots have been carved out in the area intervening the jail wall and the land sold to Jai Jawan Co-operative Housing Society, Harsul, Aurangabad. It is the contention on behalf of the appellants-defendants that there is variance in the pleadings of the plaintiff; averments in the plaint are vague, plaintiff has no *locus standi* and the suit is not maintainable at his behest as defendants' mother was necessary party since she was also one of the owners of the suit property.

3. As against aforesaid, it is the contention of the respondent-plaintiff that the property has been purchased by him from the predecessor-in-title which had come to the predecessor under the transaction with chief promoter of the Jai Jawan Co-operative society. It is contended by the respondent-plaintiff that the sale deed in favour of the society shows that the eastern boundary of land of one acre sold to the society is at a distance of 33 ft. from jail wall and that under the demarcated lay out, there had been open space of 47 ft. in width abutting said 33 ft. portion on eastern side of land purchased by the society. In the circumstances, it is the contention of the plaintiff that the claim by defendants about plaintiff carving out plots in the property which belongs to society is vacuous, baseless and without any substance. It is further contended that there are concurrent findings by the courts and no substantial question of law can be said to have arisen in the matter and as such second appeal would not be maintainable.

4. It is the contention of the appellants-defendants that it has emerged on record that 33 ft. development plan road has been cancelled and said strip of 33 ft. continues to be enjoyed by the owners-defendants. Plaintiff or for that matter any other person, cannot lay claim to said portion. Under the circumstances, the plots carved out by defendants cannot be faulted with.

5. The trial court as well as the appellate court have scanned the entire evidence. The appellate court has considered the sale deed dated 19-02-1985 in favour of the Jai Jawan Co-operative Housing Society by defendants which has been placed on record at Exhibit 58 shows 33' development plan road on eastern side of the property sold to the society. Plot no.1 and plots no. 6 to 9 are situated on the eastern portion of the property purchased and from the boundary of the plots purchased, there is intervening area, between said plots and on the eastern boundary of the land of the society, which is an open space of 47' east-west width running north-south to portion of 33' then proposed development plan road. The courts under the circumstances have considered that from jail wall, total distance of open space appears to be of 80' taking into account 33' area of development plan road and 47' east-west width of land of the society up to the eastern boundary of plots no. 1 and 6 to 9.

6. The courts have further considered that the defendants have been turning around stating that the boundaries shown in the sale deed are not correct. The courts have further noted that defendant no. 1 Dhondiram has admitted in his cross examination that the sale deed was written according to his say and the contents of the same and signature thereon have not been denied. The courts have repelled the theory by the defendants

about measurement and also that the boundaries in the sale deed of one acre of land sold to the society are not correct. The courts have further considered that though society is not in existence, the land had been divided into different plots and plot holders are enjoying possession of the same by residing there.

7. In the circumstances, on appreciation of the evidence and in the absence of any evidence contradicting the boundaries in the sale deed, the findings recorded by the courts cannot be said to be erroneous. Although it has been strenuously urged on behalf of the appellants-defendants that the judgments cannot be relied on, for, they do not tend to adhere to the facts, however, on perusal of the same it appears that the findings as have been recorded by both the courts cannot be termed as perverse and not adhering to the facts and evidence on record.

8. The second appeal does not give rise to any substantial question of law and the same stands dismissed.

9. Civil application does not survive and stands disposed of as such.

SUNIL P. DESHMUKH, J.

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